

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 14-2859; 14-3582

Caption [use short title]

Motion for: Extension of time until December 22, 2014
to file and serve appellant's brief and appendix.

U.S. Bank National Association v. Dexia Real Estate
Capital Markets

Set forth below precise, complete statement of relief sought:

Appellant requests extension of time until

December 22, 2014 to file and serve its brief

and the appendix in light of (1) the second appeal

filed in this matter (14-3852) on September 24, 2014

and (2) recent entry into the case by Bingham

McCutchen LLP as counsel for Appellant.

MOVING PARTY: Dexia Real Estate Capital Markets

☒ Plaintiff

☐ Defendant

☒ Appellant/Petitioner

☐ Appellee/Respondent

OPPOSING PARTY: U.S. Bank National Association

MOVING ATTORNEY: Kenneth I. Schacter

[name of attorney, with firm, address, phone number and e-mail]

OPPOSING ATTORNEY: Gregory A. Cross

Bingham McCutchen LLP

Venable LLP

399 Park Avenue, New York, NY 10022

750 East Pratt Street, Suite 900, Baltimore, MD 21202

T: (212) 705-7000; kenneth.schacter@bingham.com

T: (410) 244-7725; gacross@venable.com

Court-Judge/Agency appealed from: Southern District of New York; Honorable Shira A. Scheindlin

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes ☐ No (explain):

Opposing counsel's position on motion:

☒ Unopposed ☐ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:

☐ Yes ☒ No ☐ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND
INJUNCTIONS PENDING APPEAL:

Has request for relief been made below?

☐ Yes ☐ No

Has this relief been previously sought in this Court?

☐ Yes ☐ No

Requested return date and explanation of emergency:

Is oral argument on motion requested?

☐ Yes ☒ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☐ Yes ☒ No If yes, enter date:

Signature of Moving Attorney:

/s/ Kenneth I. Schacter

Date: October 10, 2014

Service by: ☒ CM/ECF

☐ Other [Attach proof of service]

Nos. 14-2859-cv; 14-3582-cv

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

**U.S. BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR THE REGISTERED HOLDERS OF
WACHOVIA BANK COMMERCIAL MORTGAGE
TRUST, COMMERCIAL MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES 2006-C28,
ACTING BY AND THROUGH ITS SPECIAL
SERVICER CWCAPITAL ASSET MANAGEMENT
LLC,**

Plaintiff-Appellee,

- against -

**DEXIA REAL ESTATE CAPITAL MARKETS
F/K/A ARTESIA MORTGAGE CAPITAL
CORPORATION,**

Defendant-Appellant

**Appeal from the United States District Court for the
Southern District of New York (Scheidlin, J.)**

**DECLARATION OF KENNETH I. SCHACTER IN SUPPORT OF
DEFENDANT-APPELLANT DEXIA REAL ESTATE CAPITAL
MARKETS F/K/A ARTESIA MORTGAGE CAPITAL
CORPORATION'S MOTION FOR AN EXTENSION OF TIME TO
FILE ITS BRIEF AND APPENDIX**

Kenneth I. Schacter, pursuant to 28 U.S.C. § 1746, declares as follows :

1. I am a member of the firm Bingham McCutchen LLP, which is lead counsel for Defendant-Appellant Dexia Real Estate Capital Markets f/k/a Artesia Mortgage Capital Corporation (“Dexia”) in the above-captioned cases. Our firm was not involved in the underlying District Court proceedings and has entered the case only recently.
2. I submit this declaration in support of Dexia’s motion for an extension of its time from November 20, 2014 to December 22, 2014 to file and serve its brief and the joint appendix. Plaintiff-Appellee U.S. Bank National Association, as Trustee for the Registered Holders of Wachovia Bank Commercial Mortgage Trust, Commercial Mortgage Pass-Through Certificates, Series 2006-C28, acting by and through its Special Servicer CWC Capital Asset Management LLC (“U.S. Bank”) consents to the relief requested.
3. This appeal concerns a claim by U.S. Bank to require Dexia to repurchase a commercial loan in the amount of approximately \$13.8 million. There are currently two appeals pending in this matter. On August 7, 2014, following the District Court’s grant of summary judgment in favor of U.S. Bank (the “Summary Judgment Order”), but before judgment was entered thereon, Dexia’s counsel filed a Notice of Appeal (no. 14-2859-CV) (the “First Appeal”). On August 27, 2014, U.S. Bank filed a motion to dismiss the First Appeal on the ground that the Summary Judgment Order was not final for purposes of 28 U.S.C. § 1291. On September 12, 2014, following the District Court’s entry of two additional orders that determined the amount Dexia was required to pay to repurchase the loan, a final judgment was entered. On September 24, 2014, Dexia timely filed a Notice of Appeal from the judgment, which subsumed the Summary Judgment Order (no. 14-3582-CV) (the “Second Appeal”). On October 6, 2014, to eliminate the First Appeal, the parties filed a stipulation providing that the First Appeal would be

dismissed and that the dismissal would have no effect on the Second Appeal, which would proceed under a new briefing schedule. On October 9, 2014, this Court denied U.S. Bank's motion to dismiss because it determined that Dexia's premature First Appeal was effective because final judgment had been entered by the District Court before the First Appeal was heard and there was no indication that U.S. Bank has suffered any prejudice.

4. The current deadline for Dexia to file its brief and appendix is November 20, 2014. The current deadline for U.S. Bank to file its brief is within 91 days of November 20, 2014.

5. Dexia requests an extension until December 22, 2014 to file its brief and the joint appendix for two reasons. First, as noted above, our firm appeared as counsel for Dexia for purposes of pursuing this appeal only in September 2014. Our firm was not otherwise involved in the underlying District Court proceedings. We need an extension to afford us additional time to familiarize ourselves with the issues presented by the case, to research and analyze applicable case law, and to prepare the opening brief. Second, as noted above, the procedural history of these two appeals has been complicated and was resolved only yesterday, when the Court denied Plaintiff-Appellee's motion to dismiss.

WHEREFORE, Appellant Dexia respectfully requests that the Court extend the time for it to file its brief and the joint appendix until December 22, 2014, with U.S. Bank's deadline to file its brief to be within 91 days of December 22, 2014.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 10, 2014.



Kenneth I. Schacter